IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5033 of 1991

With

SPECIAL CIVIL APPLICATION No. 6021 of 1991

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ONGC LABOUR UNION - Petitioner(s)

Versus

ONGC,NOTICE TO BE SERVED THROUGH & 18 - Respondent(s)

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Appearance :

MR NR SHAHANI for Petitioner No(s).: 1.
MR RAJNI H MEHTA for Respondent No(s).: 1, 2,3.
RULE NOT RECD BACK for Respondent No(s).: 4, 5, 7, 8, 9, 10, 11,
12, 13, 14, 15, 16, 17, 18,19.
MR PJ MEHTA for Respondent No(s).: 6.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 14/07/2005

ORAL JUDGMENT

1.0 The petitioner Union has prayed for the following reliefs;

> "(A) Declaring that the workmen at Annexure-A are entitled to be treated as direct employees of respondent no.1 to 3 from the first date of their engagement.
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> (B) Directing respondents no.1 to 3 to pay the arrears of wages to the workmen at Annexure-A based on the pay-scales referred in Annexure-B from the first date of their engagement in any manner whatsoever and also directing these respondents to pay money equivalent of all service benefits....
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> (C) Declaring that the workmen at Annexure-A are entitled to be treated as direct employees in view of the Certified Standing Orders at Annexure-E and further directing respondents no.1 to 3 to pay arrears in terms of Prayer (B) above.
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> (D) Declaring that respondents no.1 to 3 are liable to pay PF Contribution payable by employer as well as employee both for all the workmen at Annexure-A from the first date of their engagement and directing these respondents to deposit the amount payable with a detailed statement with respondent no.6 and further directing respondent no.6 to decide the exact amount payable to the said workmen through an appropriate enquiry u/s.7(A) of the Act or any other provisions within a a period of one month.
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> (E) .....
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> (F) .....
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> (G) .....
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> (H) .....
> (I) .....

(J) .....

(K) .....

(L) .....”

2.0 Respondent no.1 herein, Oil & Natural Gas Commission (for short, “the ONGC”), as it then was, is a statutory Corporation constituted by an Act of the Parliament. The workmen, at Annexure-A to the petitions, are working as Khalasis, Attendants, Cleaners etc. and are represented in these petitions by the petitioner Union.

2.1 It is the case of the petitioner Union that the workmen fall in two different groups, i.e. – the first group is entitled to Basic Pay of Rs.1156 – Rs.1526 and the second group is entitled to Basic Pay of Rs.1256 – Rs.1936 plus variable D.A., H.R.A. and other applicable benefits.

2.2 It is the case of the petitioner Union that the said workmen are being paid cash wages by dividing them in three different categories, i.e. – skilled, semi-skilled and un-skilled workers. The workmen were being given break in service periodically. The petitioner Union further submits that the Corporation is following unfair labour practice by denying the workmen their rights under the Labour legislation.

2.3 The petitioner Union submit that the workmen were never made members of any PF Trust since they are clearly covered by Section 2(e) & (f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, “the E.P.F. & M.P. Act”).

2.4 The petitioner Union further submit that the whole contract labour system is illegal and void since it is operating in breach of Rule 25 of the Contract Labour (Regulation & Abolition) Central Rules, 1971 and attracts a criminal liability on the part of the concerned Labour Contractors. Therefore, the workmen at Annexure-A to the petitions, are required to be treated as direct employees of respondents no.1 to 3 herein. Hence, these petitions.

3.0 Mr. N R Shahani learned advocate for the petitioner Union has submitted that he is pressing this petition only with regard to Prayer (D), since the petitioner Union shall raise a Demand before the Industrial Tribunal (Central) so far as the other Prayers are concerned.

3.1 Pursuant to the order dated 17.09.1991 passed by this Court, the Regional Provident Fund Commissioner, Gujarat State, Ahmedabad, has submitted its Report before this

Court on 04.12.1991. Mr. Shahani learned advocate for the petitioner Union has drawn attention of this Court towards the findings recorded by the Squad Enforcement Officers of respondent no.6 herein.

3.2 Mr. Shahani learned advocate for the petitioner Union has submitted that the Squad Enforcement Officers of respondent no.6 have concluded that the real responsibility for payment of provident fund dues in respect of the workmen referred to at Annexure-A to the petitions, rested with the respondent – ONGC as they are the principal employer and that the arrangement of 'majoor' supplying Mandalis for a mere 8% commission for administrative expenses was an arrangement to evade provident fund liabilities.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. In view of the provisions of the E.P.F. & M.P. Act, 1952, it is very clear that though the workmen are the employees of the Contractor, it is the responsibility of the principal employer to ensure that the provisions of the law are complied with.

4.1 In the present case, the respondent – ONGC, which is

the principal employer, ought to have imposed a suitable condition in the Contract in order to ensure that the provisions of the law are complied with. It is the duty of the principal employer to ensure that the Contractor pays his employees their provident fund and if the Contractor does not pay the same to the employees – workmen, it is the duty of the principal employer to pay the same from the date of their employment. Hence, the respondent – ONGC is liable to pay the same. In above view of the matter, the following directions are issued;

(i) The Contractor, if he has not paid the provident fund amount of the workmen so far and the respondent - ONGC has not deducted the same from the account of the Contractor, then the respondent - ONGC shall pay the same to the workmen referred to at Annexure-A to the petitions, within a period of six months from today.

(ii) Respondent - ONGC being a Statutory Body, it is expected that it shall deposit the amount of provident fund of the workmen with the Provident Fund authorities considering it to be its statutory obligation, within a period of six months from today. If the said amount is deposited as

aforesaid, Respondent no.6 will not impose penal interest.

(iii) If respondent – ONGC does not deposit the amounts in question, then Respondent no. 6 – the Regional Provident Fund Commissioner is directed to hold an inquiry as to whether the Contractor has deposited the amount of provident fund of the workmen with the Provident Fund Authorities or not. If the same is deposited, respondent no.6 is directed to supply the Annual Statements of Accounts of last few years to the respective workmen – employees. But, if the Contractor has not deposited the amount of provident fund of the workmen, respondent no.6 – Regional Provident Fund Commissioner is directed to ascertain the liability of respondent ONGC and shall then recover the same from respondent – ONGC. Respondent no.6 shall thereafter give Annual Statements of Accounts to the workmen. The aforesaid inquiry to be completed within a period of six months from today.

(iv) The petitioner Union shall be at liberty to prefer an application before the Industrial Court. On receipt of such an application from the

petitioner Union, the Industrial Court is directed to consider the same and to dispose it of as expeditiously as possible.

(v) If the petitioner Union approaches the appropriate authority, i.e the Industrial Tribunal (Central) by way of an application, the Industrial Tribunal (Central) shall decide the same within a period of two years from the date of making such application.

5.0 With the above directions, the petitions stand disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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